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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,264	10/09/2001	Robert Marc Zeidman		3915

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EXAMINER

HAQ, NAEEM U

ART UNIT PAPER NUMBER

3625

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/972,264

Applicant(s)

ZEIDMAN, ROBERT MARC

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 0205.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/9/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Response to Amendment***

This action is in response to the Applicant's amendment filed October 27, 2005.

Claims 1-11 are pending. Claims 7-11 were withdrawn in the last Office Action and remain withdrawn. Claims 1-6 will be considered for examination.

***Drawings***

Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Applicant's Figure 1 shows a client server arrangement via the Internet. This is old and well known in the art as evidenced by Figure 1 (items "250" and "275") of Fisher et al. (US Patent 5,835,896). Also see col. 7, lines 24-32. Applicant's Figure 2 shows three servers connected to the Internet. US Patent 5,815,663 to Uomini discloses a similar arrangement of server (see Figure 1, items "22(1)", "22(2)", and "22(n)") Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Final Rejection***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent 6,484,176 B1) to Sealand et al. (hereafter referred to as Sealand) in view of Ramakrishnan et al. "Database Management Systems" (hereafter referred to as Ramakrishnan) and further in view of Searcher et al. "Intelligent agents: A primer" (hereafter referred to as Searcher).**

Referring to claim 1: Sealand discloses an apparatus for allowing a seller of items to gather data from a server comprising: a server computer connected to the Internet (Figure 1A, items "12" and "23"; col. 4, lines 16-31, lines 58-60) including a database for storing data about previous sales of said items on one or more of the servers (Figure 1A, item "14"; col. 1, lines 34-43; col. 3, lines 14-17; col. 4, lines 16-31); application software for allowing a user to request from the database said data about said previous sales (Figure 1A, item "13"; col. 1, lines 34-43, line 64 – col. 2, line 12; col. 4, lines 16-31; col. 6, line 63 – col. 7, line 7). Sealand does not disclose database management software for maintaining said database. However, Ramakrishnan discloses the advantages of using database management software for managing data in a database (pages 3, 4, 8, and 9). Therefore it would have been obvious to one of

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ordinary skill in the art, at the time the invention was made, to incorporate database management software in the invention of Sealand. One of ordinary skill in the art would have been motivated to do so in order to obtain the benefits described by Ramakrishnan such as data independence, data integrity and security, and crash recovery. The cited prior art does not teach data gathering software that visits the servers to compile said data about previous sales. However, Searcher discloses intelligent agents (i.e. agent software) for searching various websites to obtain data for commercial transactions (page 15, lines 19-22) based on user-specified or agent-specified rules (page 5, lines 23-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Searcher into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to automate the searching process and make the digital world less overwhelming, as taught by Searcher (page 1; page 3, lines 15-21). The cited prior art does not disclose that the server is an e-commerce website. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited apparatus. Therefore these limitations are deemed to be nonfunctional descriptive material. The elements of the apparatus would be the same regardless of what type of server or website were used. The difference between the Applicant's invention and the cited prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP

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2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a website server and an e-commerce website in the invention of the cited prior art because such information does not functionally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claims 2 and 3: The cited prior art teaches or renders obvious all of the limitations of claim 1 as noted above. Furthermore, Searcher discloses intelligent agents (i.e. agent software) for searching various websites to obtain data for commercial transactions (page 15, lines 19-22) based on user-specified or agent-specified rules (page 5, lines 23-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Searcher into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to automate the searching process and make the digital world less overwhelming, as taught by Searcher (page 1; page 3, lines 15-21).

Referring to claim 4: The cited prior art teaches or renders obvious all of the limitations of claim 1 as noted above. Furthermore, Sealand discloses a network connection software to enable the application software to communicate over the Internet with a seller at a remote computer (col. 2, lines 3-6; col. 4, lines 60-63).

**Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Patent 6,484,176 B1) to Sealand et al. (hereafter referred to as Sealand) in view of Ramakrishnan et al. "Database Management Systems" (hereafter**

**referred to as Ramakrishnan) and further in view of Searcher et al. "Intelligent agents: A primer" (hereafter referred to as Searcher) and Official Notice.**

Referring to claims 5 and 6: The cited prior art teaches or renders obvious all of the limitations of claims 2 and 3 as noted above. The cited prior art does not expressly disclose establishing a network connection to enable the agent software to communicate over the Internet with an e-commerce website. However, Official Notice is taken that it is old and well known in the art to establish a network connection for providing Internet connectivity for any software. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a network connection for the agent software in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the agent software to communicate over the Internet.

### ***Response to Arguments***

The following is in response to the arguments filed on October 27, 2005.

Applicant's arguments with respect to the Examiner's objection to Figures 1 and 2 have been fully considered but they are not persuasive. The Applicants have argued that Figures 1 and 2 are not prior art. The Examiner respectfully disagrees. As noted above, Fisher and Uomini disclose the same structure as shown in Applicant's Figures. Thus Figures 1 and 2 are prior art and the objection to the drawings is maintained.

Applicant's arguments with respect to claims 1 and 4 have been considered but are moot in view of the new ground(s) of rejection.

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Applicant's arguments with respect to the rejection of claims 2, 3, 5, and 6 have been fully considered but they are not persuasive. The Applicant has argued that there is no motivation to combine Searcher with the other references other than impermissible hindsight reconstruction. The Examiner respectfully disagrees. As noted above, Searcher provides the motivation.

The Examiner notes that the Applicant did not respond to the Examiner's Official Notice rejection of claims 5 and 6 in the previous Office Action. In order to adequately traverse a rejection based on common knowledge (i.e. Official Notice), an Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. A general allegation that the claims define a patentable invention without any reference to the Examiner's assertion of Official Notice is inadequate. In the present case, the Applicants did not respond to the Examiner's rejection using Official Notice. Furthermore, the Applicants failed to argue why the noticed fact is not considered to be common knowledge or well-known in the art. Instead, the Applicants have provided a general allegation of patentability of claims 5 and 6. For this reason, Applicants' response is considered to be an inadequate traversal of the Official Notice used by the Examiner in the rejection of claims 5 and 6 under 35 U.S.C. §103.

Since the Applicants have failed to seasonably challenge the Examiner's Official Notice presented in the previous Office Actions, the Examiner now interprets all Official Notices as admitted prior art. *Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re*



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*Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946). If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). Also see MPEP 2144.03.*

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on (571)-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Naeem Haq**, Patent Examiner  
Art Unit 3625

January 22, 2006



**WYNN W. COGGINS**  
SUPERVISORY PATENT EXAMINER  
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